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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

HUMAN RIGHTS AND THE ENVIRONMENT

Second progress report prepared by Mrs. Fatma Zohra Ksentini,
Special Rapporteur

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INTRODUCTION

1. In decision 1989/198 of 31 August 1989, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities asked Mrs. Fatma Zohra Ksentini to prepare, without financial implications, a concise note setting forth methods by which a study could be made of the problems of the environment and its relation to human rights. The Sub-Commission also decided to request the Secretary-General to invite Governments, the United Nations bodies concerned, specialized agencies, intergovernmental organizations and non-governmental organizations to submit relevant information and observations, to assist in the preparation of the working paper.

2. In resolution 1990/41 of 6 March 1990 entitled "Human rights and the environment", the Commission on Human Rights affirmed its awareness of increasing environmental degradation and underscored the link between preservation of the environment and the promotion of human rights. It welcomed the Sub-Commission's decision to have a note prepared for its forty-second session on methods by which a study on the problem of the environment and its relation to human rights could be made.

3. In response to these requests, Mrs. Ksentini, Special Rapporteur, submitted a note to the Sub-Commission at its forty-second session containing a number of proposals for a study of the environment and its relation to human rights (A/CN.4/Sub.2/1990/12). After examining the note, the Sub-Commission adopted resolution 1990/7 on 30 August 1990 requesting the Special Rapporteur to submit a preliminary report to it at its forty-third session.

4. The Commission on Human Rights, in resolution 1991/44, requested the Special Rapporteur to submit a study on human rights and the environment to the Sub-Commission at its forty-third session. The Economic and Social Council approved the Commission's recommendation in decision 1991/244.

5. The Sub-Commission, after considering the preliminary report (E/CN.4/Sub.2/1991/8), took note of it with satisfaction and adopted resolution 1991/24 whereby it requested the Special Rapporteur to submit a progress report at its forty-fourth session taking into account the comments made during the discussion of the preliminary report.

6. The Commission on Human Rights in decision 1992/110, and the Economic and Social Council in decision 1992/252, endorsed this request.

7. The Sub-Commission examined the progress report (E/CN.4/Sub.2/1992/7 and Add.1) containing an analysis of national and international provisions and the decisions and comments of human rights bodies relating to human rights and the environment as well as information on the results of the Conference on Environment and Development held in Rio de Janeiro from 3 to 14 June 1992, in which the Special Rapporteur participated as an observer.

8. In resolution 1992/31 the Sub-Commission took note with appreciation of the progress report and requested the Special Rapporteur to continue her study and to submit to the Sub-Commission at its forty-fifth session a second progress report containing additional information and an analysis of decisions

and views of international human rights organs and other relevant organs, as well as information on and an analysis of national laws and practice. The Commission on Human Rights endorsed this request in decision 1993/144.

9. This second progress report is submitted to the Sub-Commission in accordance with the terms of reference assigned to the Special Rapporteur by the Economic and Social Council, the Commission and the Sub-Commission and will not revert to the analyses made in earlier reports. Its main purpose is to review developments in regard to the recognition and implementation of environmental rights as human rights on the basis of the standards and practices developed at the national, regional and universal levels. It contains preliminary recommendations with a view to the submission of conclusions and final recommendations to the Sub-Commission at its forty-sixth session, in conformity with paragraph 3 of resolution 1992/51 of the Sub-Commission.

I. NATIONAL PROVISIONS AND PRACTICES

A. Constitutional Provisions 1/

10. In her progress report of 1992 (E/CN.4/Sub.2/1992/7 and Add.1) the Special Rapporteur noted that a number of countries had devoted constitutional provisions to the environment, the content and scope of which varied from one country to another, and reproduced extracts from some 50 national constitutions. The information reproduced below supplements the data included in the previous report:

1. Republic of Afghanistan

1990 Constitution, chapter 2, Foundations of socio-economic system, article 32:

> The State shall adopt and implement necessary measures for the protection of nature, natural wealth and reasonable utilization of natural resources, improvement of living environment, prevention of pollution of water and air, and conservation and survival of animals and plants.

2. Republic of Angola

1992 draft constitution, Part I, Fundamental principles, article IX Protection of Environmental Heritage:

> The Government of Angola shall seek to protect and preserve the unique environmental heritage of Angola as it encourages fulfilment of the human environment for all.

3. Republic of Bulgaria 2/

1991 Constitution, chapter 1, Fundamental principles, article 15:

> The Republic of Bulgaria ensures the protection and conservation of the environment, the sustenance of animals and the maintenance of their diversity, and the sensible utilization of the country's natural wealth and resources.

Chapter 2, Fundamental Rights and Obligations, article 55:

> Citizens have the right to a healthy and favourable environment, consistent with stipulated standards and regulations. They have an obligation to protect the environment.

4. Chad

1989 Constitution, article 1:

...

The Chadian people affirm also the social vocation of their State by assigning the following fundamental missions:

...

to preserve the environment and natural resources ...

5. El Salvador

1983 Constitution, chapter I, section 4, Public health and social assistance, article 69:

The State shall maintain a permanent control over the quality of pharmaceutical, chemical and food products and over the atmospheric conditions that may affect health.

Also the State shall control the quality of food products and the atmospheric conditions which may affect health and well-being.

6. Lao People's Democratic Republic

1991 Constitution, chapter II, The socio-economic system, article 17:

All organizations and citizens must protect the environment and natural resources: land, underground, forests, fauna, water sources and atmosphere.

7. Malta

1964 Constitution, chapter II, Declaration of principles, article 9:

The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.

8. Mongolia

1992 Constitution, chapter 1, Sovereignty of the State, article 6:

1. The land, its subsoil, forests, water, fauna and flora and other natural resources shall be subject to national sovereignty and state protection.

Chapter II, Human rights and freedoms, article 16:

> The citizens of Mongolia shall be guaranteed enjoyment of the following rights and freedoms:
>
> (i) The right to a healthy and safe environment and the right to be free from environmental pollution and ecological imbalance;
>
> (ii) The right to submit petitions and complaints to state bodies and officials. The state bodies and officials shall be obliged to consider petitions or complaints of citizens in conformity with the law.
>
> (iii) The right to approach the Court to protect the rights and, if it is considered that rights and freedoms defined by Mongolian law or international treaty have been violated, to be compensated for the damage illegally caused by others.

Article 17:

> It shall be a sacred duty for any citizen to work, protect the health of and rear their children, protect nature and the environment.

9. Mozambique

1990 Constitution, chapter IV, Economic and social organization, article 37:

> The State shall promote efforts to guarantee the ecological balance and the conservation and preservation of the environment for the betterment of the quality of life of its citizens.

10. Nepal

1990 Constitution, Part 4, Directive principles and policies of the State, article 26:

> (iv) The State shall give priority to the protection of the environment of the country and also to preventing further damage due to physical developmental activities by enhancing the consciousness of the general public about environmental cleanliness. The State shall also make special arrangements for the protection of rare animal species, the forests and the vegetation of the country.

11. Republic of Romania

1991 Constitution: Article 22, which appeared in the draft constitution, 3/ does not appear in the Constitution as adopted.

12. Republic of Seychelles

1992 Constitution (Preparation and promulgation) Act, chapter IV, article 40:

> The State pledges itself to protect, preserve and improve the environment and natural resources of Seychelles for the benefit of the citizens of Seychelles.

Article 41:

> It shall be the duty of every citizen of Seychelles:
>
> ...
>
> (e) To protect, preserve and improve the environment.

13. Republic of Slovakia

1992 Constitution, chapter 2, Fundamental rights and freedoms, section 6, Right to protection of the environment and of cultural heritage, article 44:

> Everyone has the right to a favourable environment;
>
> Everyone is obligated to protect and promote the environment and cultural heritage;
>
> No one may threaten or harm the environment, natural resources, or cultural monuments beyond the extent permitted by law;
>
> The State is responsible for the economical use of natural resources, for ecological balance and for effective care for the environment.

Article 45:

> Everyone has the right to timely and complete information about the state of the living environment and about the causes and effects of this state.

14. Republic of Slovenia

1991 Constitution, title III, Economic and social relations, article 72, Healthy living environment:

> All persons shall have the right to a healthy living environment in accordance with the law.
>
> The State shall ensure a healthy living environment. For this purpose the law shall define the conditions and means for managing economic and other activities.

The law shall define under what conditions and to what extent the causer of damage is obliged to make restitution for damage to the living environment. The protection of animals from torture is governed by law.

Article 73, Protection of the natural and cultural heritage:

All persons are obliged in accordance with the law to protect natural points of interest and rarities and cultural monuments.

The State and the local community shall ensure the preservation of the natural and cultural heritage.

B. National legislation

1. Argentina

11. Law 1352, November 1991, Procedural rules for the protection of diffuse interests or collective rights (Province of La Pampa) grants the right to legal action in defence of diffuse interests or collective rights, which include "defence of the environment and the ecological balance", as well as the defence of any other interest which responds "to needs of human groups to safeguard the quality of social life". The Law provides for action for the prevention or reparation of collective harm, aiming particularly at the "suspension of any process which releases polluting elements into the environment or has any other consequences ... which harm the ecological balance, damage, disturb or threaten aesthetic, historical, artistic, ... landscape and other values which are linked to the protection of the quality of life of groups of people or communities". (Arts. 1 (a), (c) 2 and 3 (a)).

2. Bolivia

12. The Bolivian Government informed the Special Rapporteur that it had recently adhered to International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries by Law No. 1257, which henceforth constituted the basic law for the indigenous people of the Chaco and Amazonia region. It added that the General Law on Environment allowed traditional communities and indigenous populations to participate in sustainable development and a rational use of national resources.

3. Brazil

13. Law 7347, July 1985 (modified by Law 8078, September 1990) on public civil actions provides for civil-liability actions resulting from damages inflicted on the environment and on assets and rights to artistic, aesthetic, historical, touristic and scenic values. This right is extended to autarchies, public corporations, foundations and civil associations. The court may issue preliminary injunctions ordering the defendant immediately to abstain from practising the allegedly damaging act. The final ruling may impose both responsibility for compensation for damages and specific obligations to be carried out by the defendant to remedy the harm. The sentence has erga omnes effect. 4/

4. China

14. China provided the Special Rapporteur with the text of four national laws on the environment: the Marine Environment Protection Law adopted on 23 August 1982 and effective as of 1 March 1983; the Law on the Protection and Control of Water Pollution, adopted on 11 May 1984 and effective as of 1 November 1984; the Law on the Prevention and Control of Air Pollution, adopted on 5 September 1987 and in force since 1 June 1988; and the Environmental Protection Law, adopted on and in force since 26 December 1989.

15. The Environmental Protection Law provides in article 1:

> "This law is formulated for the purpose of protecting people's environment and the ecological environment, preventing and controlling pollution and other public hazards, safeguarding human health and facilitating the development of socialist modernization".

16. Under chapter II, related to supervision and management of the environment, "the competent department of environmental protection administration under the State Council shall establish the national standards for environment quality" (art. 9).

17. Under chapter III, relating to protection and improvement of the environment, "The local people's governments at various levels shall be responsible for the environmental quality of areas under their jurisdiction and shall take measures to improve the quality of the environment" (art. 16) and "protect regions representing various types of natural ecological systems, regions with a natural distribution of rare and endangered wild animals and plants ... " (art. 17).

18. Under chapter IV, relating to prevention and control of environmental pollution and other public hazards:

> "Units that cause environmental pollution and other public hazards shall incorporate the work of environmental protection into their plans and establish a responsibility system for environmental protection, and must adopt effective measures to prevent and control the pollution and harms caused to the environment by waste gas, waste water, waste residues, dust, malodorous gases, radioactive substances, noise, vibration and electromagnetic radiation generated in the course of production, construction and other activities." (art. 24)

Furthermore "installations for the prevention and control of pollution at a construction project must be designated, built and commissioned together with the principal part of the project ... " (art. 26);

> "Any unit that, as a result of an accident or any other exigency, has caused or threatens to cause an accident of pollution, must promptly take measures to prevent and control the pollution hazards, make the situation known to such units and inhabitants as are likely to be endangered by such hazards, report the case to the

competent department of environmental protection administration of the locality and the departments concerned and accept their investigation and decision." (art. 31)

19. Chapter VI, relating to legal liability, has several provisions for legal proceedings against any violation of this law, inter alia:

"An enterprise or institution ... shall be fined by the competent department ... invested by law with power to conduct environmental supervision and management in accordance with the consequent damage; in a serious case, the persons responsible shall be subject to administrative sanction by the unit to which they belong or by the competent department of the government." (art. 38);

"A unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses ... " (art. 41);

Under article 43,

"if a violation of this law causes a serious environmental pollution accident, leading to grave consequences of heavy losses of public or private property or human injuries or deaths of persons, the persons directly responsible for such accident shall be investigated for criminal responsibility according to law".

5. Peru

Environment Code, D.L. 613, 7 September 1990:

Article I:

Everyone has the "non-renounceable" right to enjoy a healthy and ecologically balanced environment which is adequate to the development of life, and to the preservation of scenery and nature. Everyone has the duty to conserve this environment. It is a state obligation to guarantee the quality of peoples' lives at a level compatible with human dignity. The State has the duty to prevent and control environmental pollution and any other process of deterioration or depletion of natural resources which could interfere with the regular development of all life forms and society. People are obliged to contribute and collaborate without excuse in these purposes.

Article II:

Everyone has the right to demand a quick and effective legal action in defence of the environment and of the natural and cultural resources. Actions may be filed even when the economic interest of the plaintiff is not

affected. Moral interest authorizes the action even when the law does not directly refer to the agent or his or her family.

Article VI:

Everyone has the right to participate in the definition of policies and in the adoption of national, regional and local measures relating to the environment and natural resources. Everyone also has the right to be informed of measures or activities which could directly or indirectly affect health or the integrity of the environment and natural resources.

Everyone is obliged to provide the authorities with the information required by them in the exercise of their competence to control and watch over the environment.

6. Russian Federation

20. The Law of 19 December 1991 on the protection of the ambient natural environment; the relevant sections of part II, entitled "Rights of citizens to a healthy and favourable ambient natural environment" provide:

Every citizen shall have the right to the protection of his health against adverse effects of the ambient natural environment, induced by economic or other activities, accidents, disasters and cataclysms.

The right shall be assured inter alia by:

The planning and regulation of the quality of the ambient natural environment, measures aimed at preventing ecologically harmful activities, the upgrading of the ambient natural environment and the prevention and elimination of the after-effects of accidents, disasters, and cataclysms;

Making available to each person genuine possibilities for living under ambient natural environmental conditions that are beneficial to health and life;

Compensation through judicial or administrative channels in the event of injury to the health of citizens resulting from pollution of the ambient natural environment and of other harmful effects thereon, including the after-effects of accidents and disasters; and

State control over the state of the ambient natural environment and compliance with nature protection legislation, together with legal proceedings against

persons guilty of contraventions of requirements aimed at assuring the ecological safety of the population.

Citizens shall have the duty:

To participate in the protection of the ambient natural environment, by complying with requirements laid down by nature protection legislation and established quality standards for the ambient natural environment, safeguard and enhance, through their personal efforts, natural forms of wealth, continuously raise their level of knowledge concerning nature and their culture on environmental matters, and contribute to the ecological education of the coming generation.

Citizens shall have the right:

To establish public associations for the protection of the ambient natural environment, foundations and other public entities in the environmental protection field, become members of such associations and foundations, and contribute thereto their labour-derived savings;

To participate in gatherings, meetings, demonstrations, processions, petitions and referenda on the protection of the ambient natural environment, express their views, draft letters, submit complaints, and formulate demands dealing with the protection of the natural environment, and request that such letters, complaints and demands be scrutinized;

To demand from the competent agencies the provision of data that are opportune, comprehensive and reliable, concerning the state of the ambient natural environment and the measures taken for its protection;

To demand, through administrative or judicial channels, the cancellation of decisions relating to the siting, design, construction, reconstruction or operation of ecologically harmful facilities, and the restriction, suspension or cessation of activity of undertakings and other installations causing adverse effects on the ambient natural environment and on human health; and

To pose the question of the initiation of proceedings against guilty legal persons and citizens, and initiate proceedings for indemnification for injury caused to the health or possessions of citizens resulting from ecological offences.

7. Tunisia

21. According to information supplied to the Special Rapporteur by the Tunisian Government, several codes and a number of framework laws and general regulations contain provisions relating to certain aspects of the environment.

22. It was only with the enactment of the law of 2 August 1988 setting up the National Agency for the Protection of the Environment (Agence Nationale de Protection de l'environnement - ANPE) that some measure of explicit legal protection emerged. The ANPE has been made responsible in particular for combating all forms of pollution and nuisances, monitoring pollutant waste and processing facilities, registering offences as noted by its inspectors and instituting legal proceedings to obtain compensation for damage caused to the environment. The Inspectorate, which was established by law and whose statutes are contained in Decree No. 90-2273 of 25 December 1990, has judicial police powers and is authorized to note any offence against the laws on environmental protection. In addition, the above-mentioned law stipulates than an impact study must be made before the establishment of any industrial, agricultural or commercial unit or installation whose activities may be a source of pollution or environmental damage. Decree No. 91-362 of 13 March 1991 specifies the procedure to be followed in the matter of impact studies and lists the projects, units and installations for which impact studies are required.

23. Furthermore, a number of other instruments have been revised in order to ensure better legal protection for the environment, such as the Forestry Code (Law No. 88-20 of 13 August 1988), Law No. 89-20 of 22 February 1989 regulating the operation of quarries, and Law No. 92-72 of 3 August 1992 on plant protection and agricultural pesticide control. A draft revision of the Town Planning Code is in the process of preparation with a view, in particular, to incorporating an environmental component into town and country planning choices and strategy.

8. United Kingdom of Great Britain and Northern Ireland

24. In its response to the Special Rapporteur's request for information the United Kingdom stated that it endorsed the principles set out in the Rio Declaration on Environment and Development, that it was striving to protect and enhance the quality of the environment and that its policy was based on the following three principles set out in Principal 10 of the Rio Declaration: the right of access to environmental information held by public authorities; the right to participate in the decision-making process on environmental issues; the right to seek appropriate remedies in the event of a breach of environmental laws or failure to provide environmental services.

25. The right to environmental information held on statutory registers has been enshrined in various pieces of legislation, principally the Environmental Protection Act 1990. The Environmental Information Regulations 1992 implemented the 1990 European Community directive on public access to environmental information. These Regulations ensure that environmental information held by public authorities is made available to the public. The Environmental Protection Act also gives the public the right to participate in environmental decisions affecting pollution control and recycling. There are

substantial rights of consultation in planning matters provided through the Town and Country Planning Act 1990 and the Planning and Compensation Act 1991. The United Kingdom legislation implementing the 1985 European Community environmental impact assessment directive gave the public the right to participate in the environmental impact assessment process.

26. The public can seek access to justice in environmental matters in a variety of ways. In England and Wales any person, or organization, may institute criminal proceedings for most criminal offences. Public bodies such as the National Rivers Authority have specific powers to bring criminal proceedings. Under the civil law a person who has suffered damage may bring proceedings against the person alleged to have caused the damage. Courts have powers to grant interim relief. Decisions made by public bodies can be challenged by any person with a "sufficient interest" through proceedings for judicial review. Environmental organizations with a sufficient interest may also bring proceedings in this way. The procedure for public inquiries or hearings commonly permit any person or organization that expresses an interest to appear or be represented.

9. Venezuela

27. The Regulation on Environmental Safeguards of 2 November 1990 recognizes the right to environmental information and participation. It establishes that neighbour associations, environmental groups or associations, local groups and other associations can exercise this environmental safeguard, and can denounce the appropriate administrative and judicial bodies, participate in administrative processes affecting their interests, and plan and implement activities of environmental management, etc. 5/

C. Cases in national courts

1. Chile

28. A recent case now pending before the courts of Chile has been brought to assert the human rights of peoples adversely affected by actual and imminent environmental degradation. The case concerns a series of six major dams in the Chilean region of the River Biobío, the first of which is to be constructed by the Eléctrica Pangue S.A. corporation. On 29 September 1992, the Chilean non-governmental organization Grupo de Accion del Biobío, together with the Pehuenche indigenous peoples of the affected region and other communities, filed an action in the Court of Appeals of Concepción, Chile, against Pangue. The action was brought under a constitutional provision which grants a "recurso de protección", a special appeal for the protection of human rights. 6/ In addition to requesting the suspension of the project, the plaintiffs requested the protection of the right to life of a million people inhabiting the riverside who are going to be affected by the deterioration and decrease of the river waters; the right to property of farmers and indigenous communities; and the right to live in an environment free from pollution, recognized in article 19 (8) of the Chilean Constitution. 7/ The Court of Concepción declared itself without jurisdiction to decide on the case, and the matter is presently on appeal to the Supreme Court of Santiago, Chile. 8/

2. Colombia

29. There have been two interesting recent cases in the national courts of Colombia which directly affirmed and enforced the constitutional right to the environment related to planned development activities. The first of these cases is Organización Indígena de Antioquia v. Codechoco and Madarien. 9/

30. On 11 February 1993, the Indigenous Organization of Antioquia presented an "acción de tutela" - a legal action allowed by Colombian law to claim the protection of fundamental constitutional rights - before the Third Agrarian Court of the District of Antioquia in Colombia. The plaintiffs alleged that the fundamental rights of the indigenous Emberá-Catío peoples were violated as a result of the exploitation of the forest in their reserve adjoining the river Chageradó, and in its area of influence. Logging was carried out there between 1987 and 1990 by the Madarien company and the National Corporation for the Development of Chocó (Codechoco). The Emberá-Catío people demanded that the court protect their fundamental environmental rights, that it award reparation for existing damage and issue orders to prevent future damage to the environment.

31. The Court, in its opinion dated 24 February 1993, declared that the Emberá-Catío ethnic group had suffered actual damages as a result of the logging activities. The Court stated that those communities had not only suffered physical damages, but that they also were likely to be affected by future continuing harm owing to their high cultural and nutritional dependence on the tropical forest in which they dwelt. The opinion of the Court was that

> "... the devastation of their forests alters their relation with the environment and endangers their lives and cultural and ethnical integrity, since ..., with the reduction or disappearance of the forest, the main source of animal protein ... is also reduced or extinguished. 10/

32. The Court acknowledged the "grave consequences" to the health and life of the indigenous peoples as a result of living in deforested and polluted areas where game, fish and many fruits and plants could no longer be found. 11/ The Court also found violations of several fundamental rights of the Emberá-Catío people through the "unjust and irrational logging of ... the tropical forest". Such breached rights included, in addition to the right to life and personal integrity, the rights to property, to work, to ethnical integrity (including the concepts of cultural and territorial integrity) and the right to special protection as a distinct ethnic group. 12/ The Court also ordered the defendants to pay for an environmental and cultural impact study to be carried out by the appropriate authorities.

33. The second significant case decided in Colombia is Fundepúblico v. Mayor of Bugalagrande and Others presented before the First Superior Court of Tuluá-Valle, Colombia, on 19 December 1991. 13/ The plaintiffs in this case, representing the local communities in the neighbourhoods of La Planta and Cocicoinpa, in Bugalagrande, Colombia, presented an "acción de tutela" seeking the prevention of actual and imminent damage to the public interest as a result of the operation of an asphalt plant in the town of Bugalagrande.

34. The Court ruled in favour of the plaintiffs, stating that the operation of the asphalt plant would pose a significant risk to the environment. It then proceeded to grant protection of the right to a healthy environment by requiring the mayor of Bugalagrande to suspend temporarily the operation of the asphalt plant. 14/ In reaching this conclusion, the Court stated that "it is evident that there is a threat to a fundamental right recognized in the national Constitution ... which could be violated, causing irreparable harm to the community". 15/

35. This ruling was appealed in 1992 before the Constitutional Court of Colombia, which upheld the conclusion of the First Superior Court of Tuluá in a remarkable decision. In Fundepúblico v. Mayor of Bugalagrande and Others, the Constitutional Court 16/ laid down precedential language in favour of the recognition of the right to a healthy environment as a fundamental human right.

36. In its decision, the Constitutional Court first recalled that in the drafting of the 1991 Colombian Constitution the protection of the environment and natural resources was one of the most important areas of discussion because of its intimate link with the right to life. The Court stated that the right to the environment:

> "has been conceived as a group of basic conditions surrounding man, which define his life as a member of the community and allow his biological and individual survival, in addition to his normal participation and integral development in society." 17/

It must therefore be understood as fundamental "for the survival of the human species". 18/ The Court added that "the protection of the environment ... is a compromise between the present and future generations". 19/

37. In considering the right to a healthy environment as a fundamental human right, the Constitutional Court also made broad reference to recent developments in international and comparative law and international institutions, including the ongoing study of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 20/

38. In its conclusion, the Court further stated that "lack of compliance with a measure which guarantees or protects a right threatens such right" and it recognized in this particular case that there was "an evident connection between the right to enjoy a healthy environment and other constitutional rights, such as the rights to sanitation, to life, to work, and to the prevalence of the general interest. 21/

39. The constitutional doctrine laid down in this case is compulsory for the Colombian authorities in all similar situations in which there is a threat of contamination of the environment and environmental impact studies and/or operating permits are lacking as in this case.

3. India

40. In India, a whole series of cases have firmly established the right to a healthy environment as a fundamental constitutional right. In Rural Litigation and Entitlement Kendra and Others v. State of Uttar Pradesh and Others, the Supreme Court of India cited the fundamental duty of all citizens under article 51 A of the Constitution to protect the environment as the basis for its decision to enjoin illegal mining operations in the Mussoorie Hills area of the Indian Himalayas. 22/ The Court noted that the obligation to maintain an ecological balance extended as much to the State as to individuals:

> "Governments both at the centre and in the State must realize and remain cognizant of the fact that the stake involved in the matters is large and far-reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery of India, as some doubt, may perish and the Thar desert may expand its limits." 23/

41. Constitutional articles were again invoked in M.C. Mehta v. Union of India and Others. 24/ In this case, the Supreme Court of India ordered 29 tanneries operating on the banks of the Ganga River shut down for failure to undertake primary treatment of industrial effluent as required by law. The Court, in addition to citing the constitutional provisions on environmental rights and duties of citizens, quoted at length from the Stockholm Declaration. While acknowledging that industry compliance with India's environmental laws might result in some economic costs, the Court very clearly noted that fundamental environmental rights did not have a price tag: "closure of tanneries may bring unemployment [and] loss of revenue, but life, health and ecology have greater importance to people". 25/

42. An even more recent decision of the Supreme Court of India gives express recognition to the fundamental right to a wholesome environment. In Subhash Kumar v. State of Bihar 26/ the Supreme Court declared that the right to a wholesome environment formed an integral part of the right to life guaranteed by article 21 of the Indian Constitution. The Court stated:

> "[The] right to life is a fundamental right under article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life." 27/

43. In addition to these opinions of the Supreme Court of India recognizing the right to a healthy environment, the Court has recently issued other remarkable decisions for the protection of the environment and the well-being of Indian citizens. Among these, should be singled out the Supreme Court's decision in M.C. Mehta v. Union of India for its far-reaching practical consequences. 28/ This decision is particularly significant for its recognition and enforcement of the right of the people to receive information, recognized in article 19 (1) and 21 of the Constitution. 29/

44. In this decision, the Supreme Court of India "added a new dimension" to the character of the fundamental duties of citizens to protect the environment, which until then had been considered unenforceable by the judiciary. The Court found an imperative need to protect the environment and issued a number of directions, which included a requirement that the Indian Government issue directions to the state governments and union territories to enforce, as a condition for the granting of licences to all cinema halls, touring cinemas and video parlours, an obligation to exhibit, free of cost, at least two slides or messages on the environment in each show. Failure to comply with the orders would result in cancellation of the licence. Other such measures included directions to public television and radio networks to take steps to broadcast programmes on the environment and pollution every day for at least five to seven minutes once a week; to the Ministry of the Environment to start producing appropriate slide materials on the environment and pollution, and to the Ministry of Information and Broadcasting to start producing information films on such matters. 30/

45. Courts in India have experienced a remarkable liberalization since the early 1980s which has allowed more effective access of any sector of the population to the courts for purposes of seeking redress for environmental harm. Any person can now bring to the notice of a court a state of affairs that is contrary to any law or the Constitution, 31/ and this can be done even by a letter or a postcard addressed to the judges, which is considered as a writ petition. 32/ Public interest litigation has emerged as a powerful tool which has "opened the courts to new challenges on behalf of disempowered groups". 33/

4. Sri Lanka

46. An important case was brought by an environmental non-governmental organization in the Supreme Court of Sri Lanka in 1991 under its fundamental rights jurisdiction. In Environmental Foundation Ltd. v. Attorney-General and Others, 34/ the affected villagers invoked the Court's jurisdiction on the basis that their rights to life, residence and occupation were threatened by the operation of a rock quarry. The Court granted leave to proceed and subsequently granted interim relief in the form of an injunction preventing the operation of the quarry. The dispute was later resolved by mediation, and the terms of the settlement included a detailed regulatory scheme for the quarry's operation and the establishment of a monitoring committee consisting of industry representatives, villagers and government officials. 35/

47. Public interest litigation in Sri Lanka has also led to the mitigation of environmental pollution and damage caused by another rock quarry, 36/ prosecution by the Director of Wildlife Conservation of encroachers in two national parks, 37/ and orders compelling the Director of Coast Conservation to request an environmental impact assessment from a developer planning to convert a natural wetland in a commercial saltern. 38/

II. EVOLUTION AT THE REGIONAL LEVEL

A. Regional provisions

48. Numerous regional provisions were cited in the Rapporteur's 1991 preliminary report and the 1992 Progress Report. 39/ The following information is provided as a preliminary update.

49. On 28 September 1990, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1130 (1990) on the Formulation of a European Charter and a European Convention on Environmental Protection and Sustainable Development. 40/

50. Article 1 of the proposed text stipulates that every person has the fundamental right to an environment and living conditions conducive to his good health, well-being and full development of the human personality.

51. Article 2 imposes on every European and every contracting European State an equivalent duty to preserve and protect the environment in the interests of the health and well-being of all people inside and outside Europe, for the benefit of present and future generations.

52. Article 17 dealing with liability provides inter alia, that "States, industry and all persons shall be liable to pay for the environmentally harmful consequences of their actions and development programmes".

53. Article 18, on criminal liability, invites each contracting party to take inter alia the following measures:

(i) Create specialist branches of courts and officers of public prosecution to deal with environmental cases.

(g) Codify the entire legislation on the environment.

54. On the same day the Parliamentary Assembly of the Council of Europe also adopted Recommendation 1131 (1990) on Environmental Policy in Europe, in article 13, of which the Assembly recommended that the Committee of Ministers invite Governments "to propose to schools and educational institutions that they include environmental education in their curricula".

55. The Organisation for Economic Cooperation and Development (OECD) communicated to the Special Rapporteur that it had adopted recommendations C (74) 224 and C (76) 55, which include the principles of non-discrimination and equal right of access in relation to transfrontier pollution. The relevant sections read as follows:

"Persons affected by transfrontier pollution should be granted no less favourable treatment than persons affected by a similar pollution in the country from which such transfrontier pollution originates."

"Persons affected by transfrontier pollution shall have the right to take part in, or resort to, all administration and judicial procedures

existing within the country of origin in order to prevent domestic pollution, to have it abated and/or to obtain compensation for the damage caused."

56. OECD also submitted the guidelines of its Development Assistance Committee, of which guideline No. 3 on "Aid agencies on involuntary displacement and resettlement" calls on project designers and implementors to ensure that the population displaced by a project receives benefits from the changes and that it is re-established on a sound productive basis. With respect to resettlement planning, it should take into account basic policy consideration; inter alia

"Participation by environmental agencies and community participation in planning and implementing resettlement is essential and should include women."

57. In the Maastricht Treaty on European Union, of 6 December 1991, the European Community inserted Title XVI "Environment" article 130, providing in section 1 that community policy on the environment shall contribute to pursuit of the following objectives: preserving, protecting and improving the quality of the environment; protecting human health; prudent use and rational utilization of natural resources; and promoting measures at international level to deal with regional or worldwide environmental problems.

B. Decisions and comments of European human rights bodies

58. In paragraphs 87 and 88 of her previous report (E/CN.4/Sub.2/1992/7) the Special Rapporteur referred to the case of Powel and Reyner which went to the European Court of Human Rights. The Council of Europe recently provided the Special Rapporteur with the facts of an earlier, analogous case, which was settled out of court.

59. In the case of Frederich William Baggs against the United Kingdom, 41/ the Commission considered admissible a similar complaint, alleging that the noise produced by aircraft traffic at Heathrow airport amounted to violation of the human right to privacy under article 8 of the European Convention on Human Rights and to violation of the right to property under article 1 of Protocol No. I to the Convention. The Commission subsequently mediated between the parties under article 20 (b) of the Convention and secured a friendly settlement of the case out of court.

60. In the case Raymond de Geouffre de la Pradelle against France 42/ the European Commission of Human Rights touched on an issue similar to the one which was judged by the European Court in the Skärby, Fredin and Oerlemans cases. 43/ The Commission, confronted with a French decree of 4 July 1983 directing that part of the applicant's property be listed as a protected scenic area pursuant to an act of 2 May 1930, stated in paragraph 45:

"The Commission must insist at this point that it is not required to evaluate the system used in French law for placing sites under preservation orders according to the standards set by article 6, paragraph 1 [of the European Convention], nor to decide to what extent the procedure concerned is individual or regulatory in character. On the

> other hand, it does have a duty to investigate whether, in a given situation, the applicant has had the opportunity of contesting a preservation order concerning him."

The Commission furthermore noted that, although an appeal to contest the lawfulness and conformity with regulations of the decree listing his property as a protected site lay in France with the "Conseil d'Etat", this system imposed obligations on a potential appellant which placed him, as in the case in question, in a situation where he was unable to make effective use of the right of appeal, namely by endeavouring to observe the relevant deadline. 44/

61. The Commission concluded that there had been a violation of article 6, paragraph 1, of the Convention, because the Convention was intended to guarantee not theoretical or illusory rights, but practical and effective rights, in particular the right of access to a court, in view of the prominent place held in a democratic society by the right to a fair trial. 45/

62. The right to life is an essential human right with environmental aspects. Although not based on environmental facts, one Council of Europe case suggests that a Government may be liable in certain circumstances for loss of life if it fails to protect its citizens from life-threatening dangers. The case suggests that Governments are, in fact, bound by a duty to take affirmative steps to save lives. In Association X v. the United Kingdom, the parents of children killed by adverse reactions to government-sanctioned vaccinations claimed that the vaccination schemes deprived their children of the right to life. 46/ The Commission determined that the State could not be held responsible for the deaths on the facts of the case. However, it also declared that

> "[t]he concept that 'everyone shall be protected by law' enjoins the State not only to refrain from taking life 'intentionally' but, further, to take appropriate steps to safeguard life." (emphasis in original)

Thus, the case supports the idea that Governments may have a duty to act affirmatively to protect their citizens from dangers, which could include environmental dangers, posing a risk to life. 47/

63. As noted in the Special Rapporteur's 1992 progress report, 48/ the European Court of Human Rights has legitimized environmental restrictions on the use of private property. A 1991 Court decision, Pine Valley Developments Limited and Others v. Ireland, continues this trend. 49/

64. In Pine Valley, the applicants complained that the denial by local planning authorities of permission to construct commercial buildings on their land constituted a violation of Protocol I, article 1. Permission to build was denied because the area was zoned as a green belt. The court concluded that, although the planning restrictions constituted an interference with the right to peaceful enjoyment, the interference did not constitute a violation of Protocol I, article 1, because it was lawful, in pursuit of a legitimate aim and proportionate to that aim. The court stated that preventing construction "for the further development of agriculture so as to preserve a

green belt must be regarded as a proper way - if not the only way - of achieving that aim". This case thus demonstrates that environmental concerns are encompassed within the human rights instruments.

65. Support for the claim that government must take positive steps to guarantee human rights is found X v. France, where the applicant alleged that the Government had violated her right to peaceful enjoyment of her property by building a nuclear power plant near her home. In that case the court implied that States may have to take affirmative action to protect human rights. The court stated that "a State has not only the duty to respect, but also to protect rights ". 50/ The claim was ultimately declared inadmissible, but it should be noted that the claimant had already received some compensation from the Government.

66. Another human right with important environmental implications is the right of access to information. The legal basis for such a right in Europe is discussed extensively in both the 1991 and 1992 progress reports of the Special Rapporteur to the Sub-Commission. 51/ Two recent cases in the European Court of Human Rights elaborate on the legitimacy of a right to access to information as guaranteed by the European Convention on Human Rights. Neither is based on environmental facts, but both contribute to the legal interpretation of this right. Although the court did not find a violation of article 10 (freedom of information) in either case, it found in one case a violation of article 8 (right to privacy).

67. In Leander v. Sweden, 52/ the applicant sought access to information about him kept in a secret police register. On the basis of this information, the applicant was refused a job as a naval museum technician. Although the court found that the "storing and release" of information relating to the applicant's private life was an interference with his right to respect for private life as guaranteed by article 8, this interference was justified. Hence, the Government did not violate the applicant's rights under article 8.

68. The next major case on freedom of access to information was Gaskin v. the United Kingdom. 53/ In this case, the applicant sought access to childhood records compiled when he was a ward of the State. The court found a violation of article 8.

C. Inter-American Commission on Human Rights

69. The Inter-American Commission continues to be involved in human rights cases with environmental facets. Two cases were mentioned in the Rapporteur's 1992 report to the Sub-Commission. In the Yanomami case, the Commission found a violation of the right to life as a result of development projects in traditional indigenous lands. The recent petition submitted to the Commission by the Confederación de Nacionalidades Indigenas de la Amazonia Ecuatoriana also involves development projects in traditional indigenous lands and alleges violations of several human rights, including the rights to life, health and well-being.

70. In addition to these cases, a third petition has been filed with the Commission by a member of the Mexican House of Representatives. 54/ The complaint concerns an ecologically devastated area on the United States-Mexico

border, where every day more than 2,000 maquiladoras, or assembly plants, dump tons of toxic wastes into the Rio Grande river and emit harmful chemicals into the air. Proposals for a new radioactive waste site on the United States side of the border are at present under consideration. In the complaint against the United States and Mexican Governments, the petitioner contends that by authorizing a site on the border the Governments are threatening the life, physical integrity and health of inhabitants. The petitioner alleges that alarming increases in the rate of birth defects in border areas are directly attributable to the numerous maquiladoras already operating there. Construction of this site, she argues, would only increase the amount of water pollution that the residents would have to endure. In addition, the seismic instability of the area exacerbates the potential for a major accident. According to the petitioner, this increased risk of harm violates the residents' rights to life, health and well-being. The Commission has, at present, neither accepted nor rejected the petition.

III. DECISIONS AND COMMENTS OF UNITED NATIONS HUMAN RIGHTS BODIES

A. Committee on the Rights of the Child

71. In their initial reports to the Committee on the Rights of the Child under article 44 of the Convention on the Rights of the Child a number of States indicated their concern for children and the state of the environment.

72. Sweden stated that each individual active in school must promote respect for every person's intrinsic worth and respect for the common environment. 55/

73. The Sudanese Government reported that article 29, paragraph f, of the 1991 Public Education Act stated its aim "to make young people aware of environmental problems, familiarize them with nature in the diversity of its elements". 56/

74. The Egyptian Government related the following information to the Committee: health offices provide the service of environmental promotion; school health units provide preventive and curative services for schoolchildren as well as school environment improvement services. 57/

75. Bolivia stated in its initial report that it had developed a 10-year action plan (1990-2000) aimed inter alia at improving the health situation of women and children by promoting full attention to the needs of both health environment and education. 58/

76. The Russian Federation communicated the following information. The adverse influence of environmental factors on public health - especially among young people, pregnant women and children - is a serious problem in the Russian Federation. The question of legal recourse for children against breaches of environmental regulations is being addressed. The regulations concerned are to be found in the Environmental Protection Act, and state, firstly, that compensation is payable for damage to people's (including children's) health caused by adverse environmental effects and, secondly, that full reparation must be made for harm resulting from breaches of environmental regulations, including inability to have children and the risk of giving birth

to children with congenital defects. However, the mechanism for implementing these provisions, so important for mothers and children, has not yet been put into operation, owing to lack of experience of instituting and conducting legal proceedings in this field. 59/

B. Human Rights Committee

77. Cases involving the environment have been heard by the Human Rights Committee. The first was the Lubicon Lake case, discussed in the Rapporteur's 1992 progress report.

78. The second case, EHP v. Canada, implicated the right to life in an environmental context. In 1980, a resident of Port Hope, Ontario, alleged that large-scale dumping of nuclear waste had taken place within her community. 60/ The dumpsites were closed, but approximately 200,000 tons of radioactive waste remained in Port Hope. The communication claimed that the wastes presented a threat to the life of "present and future generations" of Port Hope and a threat to health. Because the author of the communication had not yet exhausted domestic remedies, the communication was declared inadmissible. 61/ However, in the process of dismissing the complaint, the Committee discussed the validity of the petitioner's environmental claims as matters of human rights concern and observed that the communication raised serious issues regarding the duty of States parties to protect the right to life as provided by article 6.1 of the International Covenant on Civil and Political Rights. This is an important finding because the Committee only reaches the question of exhaustion of local remedies after it has determined that the petitioner has a prima facie case concerning rights protected by the Covenant. One commentator has concluded based on this that environmental claims do fall within the ambit of the Covenant. 62/

79. Another interesting aspect of the Port Hope case was the applicant's assertion that the rights of future generations had been violated by the dumping of nuclear wastes in the community. Needless to say, the rights of people not yet born are at issue in many cases involving the environment. The Committee left open the possibility that applicants can challenge violations to rights held by future generations. The Committee determined that the author had standing by virtue of her own situation, and therefore was not relying solely on the rights of future generations to sue. Thus, the Committee treated "the author's reference to 'future generations' as an expression of concern purporting to put into due perspective the importance of the matter raised in the communication". Consequently, it is as yet unclear whether individuals may assert these rights. Nevertheless, this case suggests that environmental wrongs are appropriately addressed in human rights forums, and that traditional notions of individual injury may warrant extension in cases of environmental harm.

80. More recently, the Committee dealt with communication No. 429/1990 (EW and Others v. the Netherlands). 63/ The authors of the communication are 6,588 citizens of the Netherlands who claim that their rights under article 6 of the International Covenant on Civil and Political Rights have been violated by the Netherlands, because the Netherlands Government agreed to the deployment of cruise missiles fitted with nuclear warheads on Netherlands

territory. In particular, the authors invoke the Committee's General Comment 14 on article 6, adopted on 2 November 1984. In this document, the Committee stated that

> "the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. ... The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity."

The authors argue that in actually preparing for the deployment of cruise missiles, the State party did not act in accordance with the Committee's General Comment, and therefore violated article 6 of the Covenant. The authors claim that the Government of the Netherlands placed them in a situation where a real risk of a violation of their right under article 6 existed; they consider this sufficient for a finding of a violation by the Committee.

81. The State party submits that, since the cruise missiles were never actually deployed, no risk of an alleged violation of article 6 of the Covenant occurred, and therefore the authors cannot claim to have been victims of a violation of this article. In this context, it argues that a mere decision cannot constitute a violation of human rights, if it is not implemented: a violation cannot be claimed if the act which is alleged to be in contravention of a human right does not take place. The State party further argues that the communication is an actio popularis and as such inadmissible under article 1 of the Optional Protocol.

82. In its decision on admissibility (8 April 1993), the Committee stated:

> "The Committee has considered the claim of the State party that the communication is in fact an actio popularis. The Committee notes that, provided each of the authors is a victim within the meaning of article 1 of the Optional Protocol, nothing precludes large numbers of persons from bringing a case under the Optional Protocol. The mere fact of large numbers of petitioners does not render their communication an actio popularis, and the Committee finds that the communication does not fail on this ground." The Committee went on to consider whether the authors were victims within the meaning of the Optional Protocol. It noted that
>
> "For a person to claim to be a victim of a violation of a right protected by the Covenant, he or she must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such right, or that such an effect is imminent, for example on the basis of existing law and/or judicial or administrative decision or practice."

After examination of the arguments and materials before it, the Committee declared the communication inadmissible because the alleged facts "did not, at the relevant period of time, place the authors in the position to claim to be victims whose right to life was then violated or under imminent prospect of violation".

C. Committee on Economic, Social and Cultural Rights

83. Unlike the Human Rights Committee, the Committee on Economic, Social and Cultural Rights does not have an individual complaint procedure. Instead, State parties submit reports on the steps they have taken to implement the Covenant on Economic, Social and Cultural Rights. On several occasions, these reports have involved the Committee in discussions with government representatives about human rights issues that relate directly to the environment.

84. Several articles in the Covenant guarantee rights that can only be secured in the presence of a healthy environment. For example, article 12 addresses the right to health, including "[t]he improvement of all aspects of environmental and industrial hygiene". This article in particular clearly brings environmental concerns into the realm of human rights. As a consequence, actions to improve the environment have been of concern to members of the Committee in assessing adequate State implementation of the Covenant. Several examples of this overlap between the environment and human rights are worth noting. All of the following examples arose during discussions of the implementation of article 12.

85. At the Committee's fourth session, in 1990, members of the Committee asked the Mexican representative what environmental-pollution problems Mexico was confronting in urban and rural areas, what measures had been adopted to limit the effects of environmental deterioration, how development was reconciled with environmental protection in Mexico, what efforts had been made to extend health and sanitation services and drinking-water supplies in urban and rural areas, and what differences existed in this connection between development and environmental protection. The Mexican representative explained in her reply that the seriousness of pollution problems was due above all to the development of industries, the poor quality of fuels and the increase in the number of vehicles, and that people in urban areas were encouraged to use filters so as to reduce pollution. 64/

86. At the Committee's fifth session, members of the Committee inquired about what ecological problems had been encountered by Ecuador, what measures had been taken to limit the effects of the deterioration of the environment, what action was being taken in the area of pollution control together with the countries of the Andean Group and what changes were reflected in the priority plans and programmes mentioned in the annex to Ecuador's initial report on articles 10, 11 and 12 of the Covenant. The representative of Ecuador replied that encroachment of human populations and the establishment of major industrial projects were leading to problems of soil degradation and erosion. 65/

87. Also at the Committee's fifth session, members of the Committee asked whether special environmental protection measures had been found necessary in the Dominican Republic.

88. At the Committee's sixth session, members of the Committee requested information on measures taken to protect and improve all aspects of environmental and industrial hygiene and to prevent air, land and water pollution; and on measures to overcome problems associated with urban

development and industrialization. The Panamanian representative replied that because Panama had no heavy industry, pollution was not a serious problem. 66/

D. Working Group on Indigenous Populations

89. In 1981 the Sub-Commission proposed the creation of a working group on indigenous populations. The Working Group was formed shortly thereafter. At the ninth session in October 1991, the Chairperson of the Group, introduced the text of a draft declaration concerning indigenous peoples' rights which is still under discussion within the Working Group. The draft declaration, as contained in the report of the Working Group on its tenth session (E/CN.4/Sub.2/1993/33), addresses issues related to the environment in various of its paragraphs, namely:

Operative paragraph 17

"Indigenous peoples have the right to the restitution or, where this is not possible, to just and fair compensation for lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent. Unless otherwise freely agreed upon by the peoples;

Operative paragraph 18

"Indigenous peoples have the right to the protection and, where appropriate, the rehabilitation of the total environment and productive capacity of their lands and territories, and the right to adequate assistance, including international cooperation, to this end. Unless otherwise freely agreed upon by the peoples concerned, military activities and the storage or disposal of hazardous materials shall not take place in their lands and territories;

Operative paragraph 19

"Indigenous peoples have the right to special measures for protection, as intellectual property, of their traditional cultural manifestations, such as literature, designs, visual and performing arts, seeds, genetic resources, medicine and knowledge of the useful properties of fauna and flora;

Operative paragraph 20

"Indigenous peoples have the right to require that States and domestic and transnational corporations consult with them and obtain their free and informed consent prior to the commencement of any large-scale projects, particularly natural resource development projects or exploitation of mineral and other subsoil resources, in order to enhance the projects' benefits and to mitigate any adverse economic, social, environmental and cultural effects. Just and fair compensation shall be provided for any such activity or adverse consequence undertaken;

Operative paragraph 27

"Indigenous peoples have the right to autonomy in matters relating to their own internal and local affairs, including education, information, mass media, culture, religion, health, housing, employment, social welfare in general, traditional and other economic and management activities, land and resources administration, environment and entry by non-members, and the environment, as well as internal taxation for financing these autonomous functions;

Operative paragraph 38

"Indigenous peoples shall not be forcibly removed from their lands or territories. Where relocation occurs it shall be with the free and informed consent of the indigenous peoples concerned and after agreement on a fair and just compensation and, where possible, the option of return;"

90. The World Conference on Human Rights called on the Working Group "to complete the drafting of a declaration on the rights of indigenous people, at its eleventh session" and recommended "the renewal and updating of the mandate of the Working Group" upon the completion of this task.

IV. OTHER FIELDS AND ACTIVITIES RELEVANT FOR THE STUDY

A. World Conference on Human Rights

91. The World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, solemnly adopted the Vienna Declaration and Programme of Action containing 142 paragraphs on various aspects of human rights. It is worth quoting those directly related to the right to development and environment.

92. Part I, paragraphs 10 and 11 read as follows:

"10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level."

"11. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Consequently the World Conference on Human Rights calls on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping.

Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern."

B. Commission on Sustainable Development

93. In accordance with the provisions on international institutional arrangements of Agenda 21 adopted by the United Nations Conference on Environment and Development, and pursuant to General Assembly resolution 47/191 of December 1992, the Economic and Social Council established the Commission on Sustainable Development on 12 February 1993 (decision 1993/207). The Commission is established as a functional commissions of the Economic and Social Council, and will be guided by the same rules of procedure that apply to other functional commissions of the Council, with some special arrangements for participation by non-governmental organizations. The Commission is composed of 53 members elected from among the States Members of the United Nations and members of the specialized agencies for a term of office of three years.

94. As recommended by the General Assembly in resolution 47/191, the programme of work of the Commission will be based on clusters "that would integrate in an effective manner related sectoral and cross-sectoral components of Agenda 21 in such a way as to allow the Commission to review the progress of the implementation of the entire Agenda 21 by 1997".

95. The work clusters recommended are the following:

A. Critical elements of sustainability (Agenda 21, chapters 2-5);

B. Financial resources and mechanisms (Agenda 21, chapter 33);

C. Education, science, transfer of environmentally sound technologies, cooperation and capacity building (Agenda 21, chapters 16, 34-37);

D. Decision making structures (Agenda 21, chapter 8, 38-40);

E. Roles of major groups (Agenda 21, chapters 23-32);

F. Health, human settlements and fresh water (Agenda 21, chapters 6, 7, 18 and 21);

G. Land, desertification, forests and biodiversity (Agenda 21, chapters 10-15);

H. Atmosphere, oceans and all kinds of seas (Agenda 21, chapters 9, 17);

I. Toxic chemicals and hazardous wastes (Agenda 21, chapters 19, 20 and 22).

96. At its first substantive session in June 1993, the Commission will decide, in preparing the agenda for its future sessions, which reports to consider from all relevant organs, organizations, programmes and institutions of the United Nations system, as well as international financial institutions, including the Global Environment Facility (GEF). It will also decide on ways to consider reports and contributions from entities outside the United Nations system, including non-governmental organizations.

97. In regard to the participation of and consultation with specialized agencies and the participation of other intergovernmental organizations in the work of the Commission, the Economic and Social Council decided as part of its procedural arrangements that the Commission or a subsidiary organ thereof should invite relevant intergovernmental organizations within and outside the United Nations system, including multilateral financial institutions, to appoint special representatives to the Commission to serve as focal points for the Commission's members and the secretariat. (ECOSOC decision 1993/215 of 12 February 1993).

C. The World Health Organization

98. In a publication entitled Our Planet, our Health, 67/ the World Health Organization referred to the issue of balancing rights and responsibilities with regard to the right to environment. It is advanced that Governments still retain their central responsibility for protecting individuals against threats to their health and environment and should ensure that all people have access to health care and other services and resources essential to health.

99. Governments also have a strategic role to play in promoting and supporting the initiatives of individuals, community organizations, local government, consumer organizations and non-governmental organizations. Such governance must also ensure that short-term and long-term environmental health considerations are systematically taken into account in all new developments.

D. Food and Agriculture Organization of the United Nations

100. FAO referred to its general concern with the environment based on article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights. FAO has given close attention to achieving these rights through sustainable forms of development. Conferences convened by FAO on sustainable agriculture and rural development, as well as the International Conference on Nutrition convened jointly by FAO and WHO/Netherlands Conference on Agriculture and the Environment in April 1991 largely shaped chapter 14 of Agenda 21 adopted by the United Nations Conference on Environment and Development, held in June 1992. With regard to the right to adequate food, the World Declaration and Plan of Action adopted by 159 States and the European Community at the International Conference on Nutrition in December 1992 underlined inter alia the following:

(a) It was recognized in the World Declaration on Nutrition that access to nutritionally adequate and safe food was a right of each individual. It was further recognized that globally there was enough food for all and that inequitable access was the main problem. Bearing in mind the right to an adequate standard of living, including food, contained in the Universal Declaration of Human Rights, the States pledged to act in solidarity to ensure that freedom from hunger becomes a reality. They also declared their firm commitment to work together to ensure sustained nutritional well-being for all people in a peaceful, just and environmentally safe world.

(b) The States committed themselves in the Declaration to ensuring that development programmes and policies led to a sustainable improvement in human welfare, were mindful of the environment and were conducive to better nutrition and health for present and future generations. The multifunctional roles of agriculture, especially with regard to food security, nutrition, sustainable agriculture and the conservation of natural resources, were recognized to be of particular importance in this context.

(c) With regard to the linkage of the right to food with environmental concerns and sustainable development, the Plan of Action for Nutrition included a number of objectives and guidelines, such as the necessity of ensuring access by all people to sufficient supplies of safe food for a nutritionally adequate diet; achieving environmentally sound and socially sustainable development to contribute to improved nutrition and health; and strengthening of agricultural policies.

(d) In terms of strategies and actions, the Plan of Action indicated that efforts to improve nutritional well-being should be based on the recognition of improved human welfare in harmony with the environment and nature as the primary goal of social and economic development.

(e) Defining food security in its most basic form as access by all people at all times to food needed for a healthy life, the Plan of Action recalled that the right to an adequate standard of living, including food, was recognized in the Universal Declaration of Human Rights, and stated that food security should be a fundamental objective of development policy as well as a measure of its success.

E. Office of the United Nations High Commissioner for Refugees

101. The mandate of UNHCR is to protect refugees and to seek durable solutions to their problems. The term "refugee" as defined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol does not include persons who are forced to flee from, and are unwilling or unable to return to, their country of origin solely because of adverse environmental conditions. The underlying rationale for the international protection of refugees is that they are unable or unwilling to avail themselves of the protection of their country of nationality owing to a fear of persecution on account of their race, religion, nationality, membership of a particular social group or political opinion.

102. Regional refugee instruments, however, broaden the definition of a refugee to include, according to article I, paragraph 2 of the Organization of African Unity Convention governing the specific aspects of refugee problems in Africa, "every person who, owing to ... events seriously disturbing public order in either part or the whole of his country of origin" is compelled to leave that country. The 1984 Cartagena Declaration contains a similar provision in Part III, paragraph 3, elaborating on the notion of "compulsion to leave one's country" by reference to threats to the individual's life, security or liberty.

103. Environmental disasters could be considered circumstances seriously disturbing public order within the meaning of these instruments. Note should be taken in this regard of the legislation of States in which there may exist provisions granting "temporary protected status" to persons whose country has suffered an environmental disaster.

104. It is becoming increasingly evident that environmental degradation can contribute, directly or indirectly, to population displacements, including refugee flows, and that the international community should take steps to address this phenomenon. As the High Commissioner stated at the Conference on Environment and Development in June 1992, "research should be undertaken to investigate the interaction between environmental and socio-economic factors, and the possible implications of this relationship for migration".

105. Similarly, the Note on International Protection submitted by the High Commissioner to the Executive Committee of UNHCR in 1992 (A/AC.96/799) stated that "activities within the inter-agency framework to enhance understanding of the relationship between migration, refugee flows and development and environmental issues should be encouraged". In its 1992 General Conclusion on International Protection, the Executive Committee requested the High Commissioner to "promote broadened awareness of the link between refugees and human rights, as well as development and environmental issues".

106. Of particular value would be further delineation of the scope of this phenomenon, including a more precise definition of the affected persons. A term frequently used to denote those fleeing environmental disasters is "environmental refugee". UNHCR proposes, as an alternative, the term "environmental disaster victim". This incorporates the notion of forced flight, identifies the causes of such flight, and makes no differentiation between those who have fled their country of origin and those still within its

borders. In this regard, an attempt to ascertain the relative numbers of persons fleeing from environmental disasters who cross international borders in comparison with those who are displaced within their country would be useful in considering possible national and international responses to the problem.

F. International Court of Justice

Case concerning certain phosphate lands in Nauru (Nauru v. Australia), Judgment on Preliminary Objections, 1992, ICJ Reports 240 (26 June 1992)

107. Recently, the International Court of Justice has dealt with the issue of governmental liability for environmental damages caused by severe land degradation which was permitted to occur while the Commonwealth of Australia governed the island of Nauru in the South Pacific. In its Judgment, issued on 26 June 1992, the Court accepted jurisdiction over the Application of Nauru even though the environmental damages claimed in the case took place over a period of 70 years or longer. Underlying the case is the concept of the rights of future generations, in this situation the rights of generations of Nauruans who were not born when the phosphate mining took place but who now have inherited only devastated terrain. When the Court examines the merits of Nauru's claims, it will have to determine whether the Commonwealth of Australia should be held liable for allowing the mining to proceed with no thought to preservation of the land or its rehabilitation.

108. The case commenced in May 1989 when the Government of Nauru filed an application with the International Court of Justice to initiate proceedings against the Commonwealth of Australia. In its Application, Nauru demanded that Australia pay compensation for the rehabilitation of certain Nauruan lands which were severely degraded through phosphate mining in the years before Nauru's independence in 1968.

109. Australia administered Nauru under a United Nations trusteeship arrangement prior to 1968. For 70 years prior to its independence, phosphate mining was permitted on the tiny island of Nauru, turning most of the island into a moonscape. "In place of a once-green and forested plateau", since 1907 phosphate mining on Nauru "has slowly, but surely, rendered uninhabitable all but the narrowest rim of land on the eight-square-mile island". 68/ Nauru claims that compensation is owed for the ruined land and for artificially low royalties to Nauru which were imposed by the mining consortium, and also asks the Court to impose an additional award for "aggravated or moral damages".

110. In its Application, Nauru asserted the general principle of international law that a State which is responsible for the administration of a Territory is under an obligation not to bring about changes in the condition of the Territory which will cause irreparable damage to, or substantially prejudice, the existing or contingent legal interest of another State in respect to that Territory. Nauru also asserted that there is an obligation to respect the principle of self-determination and the right to permanent sovereignty over natural wealth and resources.

111. The Commonwealth of Australia presented its preliminary objections to the Application, arguing it was inadmissible and that the Court lacked jurisdiction to hear Nauru's claims. Both States accepted the jurisdiction of the Court.

112. In its Judgment, issued on 26 June 1992, the International Court of Justice rejected all but one of Australia's preliminary objections, concluded that it had jurisdiction to consider Nauru's Application, and found the Application admissible.

G. International Law Commission

113. The International Law Commission adopted on first reading the draft Code of Crimes against the Peace and Security of Mankind at its forty-third session in 1991. 69/ It is worth noting that one article of the Code deals with the environment:

"Article 26

Wilful and severe damage to the environment

"An individual who wilfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced [to ...]."

114. In its commentary on that article, 70/ the Commission recalled that its concern "regarding harm to the environment has already been reflected in the adoption on first reading of draft article 19, on State responsibility. Under paragraph 3 (d) of the article, 'the safeguarding and preservation of the human environment' is already regarded as one of the fundamental interests of the international community and a breach of an obligation of essential importance for the safeguarding and preservation of the human environment has been defined as an international crime. 71/ In considering the draft Code, the Commission also took the view that protection of the environment was of such importance that some particularly serious attacks against this fundamental interest of mankind should come under the Code and the perpetrators should incur international criminal responsibility."

115. That commentary makes it clear that the application of draft article 26 "is not confined to armed conflicts" and that the article applies when three elements are involved. First, there should be damage to "the natural environment"; secondly, it must be "widespread, long-term and severe damage", and lastly, the damage must be caused "wilfully".

V. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

116. The problems of the environment are no longer being viewed exclusively from the angle of the pollution affecting the industrialized countries but seen rather as a worldwide hazard threatening the planet and the whole of mankind, as well as future generations. There is now a universal awareness of

the widespread, serious and complex character of environmental problems, which call for adequate action at the national, regional and international levels.

117. The realization of the global character of environmental problems is attested by the progress made in understanding the phenomena that create hazards for the planet, threaten the living conditions of human beings and impair their fundamental rights. These phenomena concern not only the natural environment (the pollution of water, air and atmosphere, seas, oceans and rivers; depletion of the ozone layer; climatic changes) and natural resources (desertification, deforestation, soil erosion, disappearance of certain species; deterioration of flora and fauna; exhaustion of non-renewable resources, etc.) but also populations and human settlements (housing, town planning, demography, etc.) and the rights of human beings (the human environment, living, working and health conditions; conditions for the exercise and enjoyment of fundamental rights).

118. By means of a global approach to these phenomena that takes in their multidimensional aspects, including their human aspects, it has become possible to move from environmental law to environmental rights, proclaimed by the 1972 Stockholm Declaration which states in its Principle 1 that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".

119. Since then, a large number of national, regional and international instruments have been drawn up which have strengthened the legal bases of environmental rights and stressed the intrinsic link that exists between the preservation of the environment and the promotion of human rights.

120. The Special Rapporteur has endeavoured, within the limits of the means at her disposal, to collect the basic legal instruments underpinning environmental rights and to clarify the relationship existing between the preservation of the environment and human rights. She has received from governments, the United Nations bodies concerned, specialized agencies and intergovernmental and non-governmental organizations, studies, communications, information and comments that have proved very useful for her report. Looking ahead to her final report, she hopes that she will have at her disposal resources that will enable her to make more systematic use of these important sources of information.

121. This preliminary research has revealed universal acceptance of the environmental rights recognized at the national, regional and international levels.

122. At the national level, over 60 constitutions brought to the attention of the Special Rapporteur contain specific provisions relating to the protection of the environment; some of them recognize explicitly the right to a satisfactory environment, entailing corresponding duties towards the State and its institutions and rights and/or obligations for individuals and organs of society. An increasing number of national legislations have developed the framework of laws and regulations needed to ensure the right to a satisfactory environment and have spelt out the substantive content of that right and the

ways and means whereby it may be exercised, including remedies to safeguard its effective enjoyment and afford guarantees for its implementation. A few constitutions provide in the section dealing with human rights and fundamental freedoms for the right to a healthy environment and the guarantees attaching thereto, including in some cases the right of recourse and petition. Some countries have provided for the punishment of offences against the environment and have introduced into national legislation the principle of compensation for the victims as well as reparation of the damage. There is moreover a trend towards developing and strengthening the means of preventing damage to the environment.

123. At the regional and universal level, recognition of the right to a satisfactory environment as a human right is reflected both in the related normative developments and in the "environmental" concern that informs the activities of human rights bodies. Although only a few instruments of a binding legal character have established a direct link between the environment and human rights, the regional and international human rights bodies are developing a practice whereby the procedural bases for enforcing the right to a satisfactory environment are becoming more firmly established and the validity of complaints of human rights violations based on ecological considerations is being recognized. These bodies do not dismiss out of hand the idea that ecological factors may hinder the enjoyment of the human rights enshrined in the instruments in their care. On the other hand, those same bodies and more particularly the European Court of Human Rights have, in certain cases, legitimated restrictions on the use of private property in the public interest based on concern for the need to preserve the environment.

124. Brief though it is, this review of the activities of human rights bodies and other fields relevant for the study has made it possible to outline the scope of environmental rights. Many human rights are suited to being applied from an ecological perspective, whether those rights are political, civil, social, economic or cultural, and whether they are exercised individually or collectively. In her previous reports, the Special Rapporteur drew up a list of those rights, albeit a non-exhaustive one.

125. Her analysis of the ways in which the right to a satisfactory environment relates to other human rights gave the Special Rapporteur occasion to stress the close link existing between that right and the right to development. The fact is that the affirmation of "ecological rights" attaching to recognition of the right to a satisfactory environment cannot be understood if we disregard the problems bound up with development both nationally and internationally. It also rests on the indivisibility and interdependence of all human rights.

126. The Special Rapporteur noted indigenous peoples' special ties with the land and the environment and their particular vulnerability to ecological hazards. The numerous communications received by the Special Rapporteur on this subject confirm the alarming data reproduced in the reports of the Working Group on Indigenous Populations (see in particular paras. 115 to 120 of document E/CN.4/Sub.2/1992/33).

127. Environmental damage has direct effects on the enjoyment of a series of human rights such as the right to life, to health, to a satisfactory standard

of living, to sufficient food, to housing, to education, to work, to culture, to non-discrimination, to dignity and the harmonious development of one's personality, to security of person and family, to development, to peace, etc.

128. In this context, it should be stressed how vulnerable certain peoples, populations, groups or categories of persons are to ecological hazards and natural disasters whether caused by man or generated by a state of war and conflict. The Special Rapporteur has pointed out that the poor and disadvantaged, minority groups, women, children, migrant workers and their families, refugees and displaced persons are generally those most affected and least protected.

129. Conversely, human rights violations in their turn damage the environment. This is true of the right of peoples to self-determination and their right to dispose of their wealth and natural resources, the right to development, to participation, to work and to information, the right of peaceful assembly, freedom of association, freedom of expression, etc.

130. In the light of the foregoing, the Special Rapporteur is of the view that effective implementation of the right to a satisfactory environment cannot be dissociated from the twinned efforts to preserve the environment and ensure the right to development. Nor can it be achieved without resolute action to ensure the enjoyment of all human rights.

131. In order to give practical expression to the right to a satisfactory environment, there is a need for development strategies that are directed towards the implementation of a substantive part of that right (the right to development, to life, to health, to work, etc.). These must go hand in hand with the promotion of the related procedural aspects (due process, right of association and of assembly, freedom of expression, right of recourse, etc.).

132. The right to a satisfactory environment is also a right to prevention which gives a new dimension to the right to information, education and participation in decision-making. The right to restitution, indemnification, compensation and rehabilitation for victims must also be seen from the angle of the special responsibility that would follow from the absence of preventive measures.

133. The right to a satisfactory environment is also a right to the "conservation" of nature for the benefit of future generations. This "futuristic" dimension restores to human rights their original purpose, as embodied in the Charter of the United Nations and the Universal Declaration of 1948. It foreshadows a "new public order" of human rights which would set acceptable limitations on those rights in the general interest while entailing corresponding duties on the part both of the public authorities and of individuals, associations and other components of civil society.

B. Recommendations

134. The Special Rapporteur wishes to leave open the question of the preparation of a new international instrument (declaration, protocol, etc.) on the right to a satisfactory environment or environmental rights. Since this

is a field that is constantly developing, she considers it important to await for practice to crystallize the areas of consensus that might open the way to a possible codification of that right.

135. The human rights component of the right to a satisfactory environment lends itself, however, to immediate implementation by various bodies, under existing mechanisms for following up regional and international human rights instruments. The practice being developed within those bodies is decisive and should bring into sharper focus the content of the right to a satisfactory environment, the ways and means of implementing it, and the related procedural aspects.

136. However, it is important to guard against dissimilar practices and ways should therefore be sought of coordinating the work of human rights bodies and of bringing their action into line with a universalistic integrated conception of environmental rights. In this regard, the Special Rapporteur considers it useful:

(a) for guidelines to be drawn up in order to address the environmental aspects of universally recognized human rights;

(b) for a meeting of experts lasting five working days to be organized under the auspices of the Centre for Human Rights with the object of helping to work out a series of practical recommendations on the way in which the right to a satisfactory environment could be rationally incorporated into the activities of human rights bodies, including the working groups, special rapporteurs and bodies established pursuant to international human rights conventions;

(c) for the Special Rapporteur to participate in the forthcoming meeting of chairmen of human rights bodies or at least for the question of the follow-up and implementation of the right to a satisfactory environment to be included in the agenda of that meeting with a view to recommendations being made on the subject.

137. The Special Rapporteur recommends that the various human rights bodies should examine, in the various fields of concern to them, the environmental dimension of the human rights under their responsibility. She suggests in particular that the following themes should be regularly examined by the bodies, committees, working groups and special rapporteurs concerned:

(a) Commission on the Status of Women and Convention on the Elimination of All Forms of Discrimination against Women: rights of women and the environment;

(b) Committee on the Rights of the Child: vulnerability of children in the face of ecological hazards; protection of children against environmental degradation with particular reference to the phenomenon of street children; education of children with a view to the preservation of the environment;

(c) Committee on the Elimination of Racial Discrimination - CERD: racial discrimination and the environment and, more particularly, the tendency for disadvantaged and marginalized groups to be more exposed to environmental

hazards. In addition, the Committee could establish appropriate case law for the treatment of complaints addressed to it in conformity with the provisions of the Convention on the Elimination of All Forms of Racial Discrimination;

(d) Committee on Economic, Social and Cultural Rights. The Committee could frame general comments with a view to defining the interaction of the environment with the human rights under its responsibility. It could moreover examine, in the context of ongoing studies, the possibility of including communications on ecological matters in any procedure established by means of a protocol for the treatment of complaints by individuals or States;

(e) Human Rights Committee. The Committee could revise its general comment on the right to life in order to include environmental concerns, frame others with regard to the rights set out in the Covenant and/or, more simply, formulate a general comment defining the links existing between civil and political rights and the environment. Moreover, it should be able, through dealing with complaints, to establish case law that will accommodate environmental concerns;

(f) Working Group on the right to development: environment and development; development and the environment funding institutions; participation by the people in activities for development and the environment, etc.;

(g) Working Group entrusted with the preparation of a draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. The group could contemplate the inclusion of specific provisions relating to rights and duties in respect of the preservation of the environment;

(h) Working groups, special rapporteurs for thematic and country studies: conditions of detention and the environment; violations of the human rights of conservationists (tortures, disappearances, right to a fair trial; freedom of expression, etc.); extreme poverty and the environment; right to housing and the environment, in particular squatter settlements, environmental health, town planning; reparation, indemnification, compensation and rehabilitation for environmental victims; expulsions, displacement, forced resettlements with a specific study of the victims of foreign occupation; racism and apartheid; environmental refugees and displaced persons; armed conflicts, observance of humanitarian law, environmental degradation and violation of the rights of civilian populations, rights of indigenous peoples and the environment, etc.

138. The Centre for Human Rights might consider being represented in the work of the Commission on Sustainable Development.

139. Having regard to the many communications brought to the attention of the Special Rapporteur expressing serious concern regarding the enjoyment of human rights in relation with ecological factors, the Special Rapporteur considers it desirable for there to be a mechanism for monitoring situations. This might take the form of a thematic special rapporteur in the Commission on Human Rights. The work of the rapporteur could be usefully supplemented by

the development of consultative services in this field and by the designation of a mediator. The Special Rapporteur would welcome the advice of the members of the Sub-Commission and other participants in order to formulate more specific proposals in this connection.

Notes

1/ Source: Albert P. Blaustein and Gilbert H. Flanz, eds., Constitutions of the Countries of the World, and information received from Member States as well as material made available by Sierra Club Legal Defense, Inc. (a non-governmental organization in consultative status with the Economic and Social Council).

2/ These provisions are additional to the one cited in the 1992 progress report, E/CN.4/Sub.2/1992/7, para. 15.

3/ See 1992 progress report (E/CN.4/Sub.2/1992/7), para. 48.

4/ R. Ribeiro Franca, "Notes on diffuse interests", in A.A. Cancado Trinidade, ed., Human Rights, Sustainable Development and the Environment (IIDH, BID 1992), pp. 211-212.

5/ A. Blanco-Uribe Quintero, "Situación del derecho al ambiente en Venezuela". p. 223, in Human Rights, Sustainable Development and the Environment, see note 4.

6/ Source: José Aylwin, Comisión Chilena de Derechos Humanos, personal communication (March 1993).

7/ Idem.

8/ Idem.

9/ Decision of the Third Agrarian Court of the District of Antioquia, Colombia (24 February 1993).

10/ Translation from the Spanish original, Decisión del Juzgado Tercero Agrario del Círculo Judicial de Antioquia, Medellín, 24 de febrero de 1993, p. 9.

11/ Ibid., pp. 10-11.

12/ Ibid., p. 13.

13/ Decision of the First Superior Court of Tuluá (19 December 1991).

14/ Ibid., p. 26.

15/ Ibid., p. 25. Translation from Spanish original.

16/ Decision of the Constitutional Court of the Republic of Colombia (17 June 1992).

17/ Corte Constitucional, Sentencia Junio de 1992, Expediente T-101, p. 9, Translation from Spanish original.

18/ Ibid.

19/ Ibid., p. 11.

20/ Ibid., p. 14.

21/ Ibid., p. 13.

22/ Supreme Court Journal 337 (1987). The Court had ordered its own investigations of the mining area and activities, which revealed massive deforestation and desertification in the mountains and the Dehra Doon valley.

23/ Ibid., p. 338. As a result of this case, the Government, acting on the Court's recommendations, initiated a reforestation programme in the affected area. P.N. Bhagwati, "Environment: Laying Down the Law", PANOSCOPE 20, September 1990, p. 8.

24/ All India Reports 1988, Supreme Court, p. 1037.

25/ Ibid., p. 1048.

26/ Cited in N.S. Nelivigi, M.G. Poojitha, A. Rosencranz, "The Indian judiciary and the environment: recent trends and developments" (unpublished 1992).

27/ Ibid., p. 82.

28/ Ibid., p. 3.

29/ For a brief discussion of this decision, see Nelivigi and others, note 26, p. 4.

30/ See, generally, Nelivigi and others, note 26, p. 3.

31/ Ibid.

32/ Ibid.

33/ See Nelivigi and others, note 26 above, p. 5. The authors refer to remarkable cases presented in the Indian courts for redress in cases of environmental pollution, for example, M.C. Mehta v. Union of India and Others (Delhi vehicular pollution case); M.C. Mehta v. Union of India, (Ganga pollution tanneries case); M.C. Mehta v. Union of India (Shiram gas leak case).

34/ Application No. 261/91.

35/ See Lalanath de Silva, "A Survey of environmental law developments in the South Asian region" (unpublished, March 1993).

36/ Keang Nam Ltd. v. Edirishinghe Arachchilage Edwin Piyasena and Others (Court of Appeal, No. 259/92, Minutes of 26 August 1992) in de Silva, note 35.

37/ Environmental Foundation Ltd. v. Madawala (CA No. 431/88) and EFL v. Atapattu (CA No. 40/84) in de Silva, see note 35.

38/ Environmental Foundation Ltd. v. Amerasinghe (Court of Appeal No. 555/87) in de Silva, see note 35.

39/ E/CN.4/Sub.2/1991/8, paras. 12-21 and E/CN.4/Sub.2/1992/7, paras. 68-72. See also the report entitled "Human rights and the environment: the legal basis for a human right to the environment", submitted by the Sierra Club Legal Defense Fund, April 1992, pp. 16-20 and 60-74.

40/ Council of Europe, Parliamentary Assembly, Official Records, 42nd Ordinary Session (Third Part), 28 September to 4 October 1990.

41/ Application No. 9310/81, Report of the Commission adopted on 8 July 1987.

42/ Application No. 12964/87, Report of the Commission adopted on 4 September 1991.

43/ See E/CN.4/Sub.2/1992/7, paras. 89-93 (discussing Skärby v. Sweden, Fredin v. Sweden and Oerlemans v. the Netherlands).

44/ Cf. para. 48 of the report, note 42 above.

45/ Ibid., paras. 50 and 53.

46/ Application No. 7154/75 (declared inadmissible by the Commission on 12 July 1978).

47/ See also the discussion of X v. France, para. 62 and note 50 below, which declares the same kind of affirmative duty with respect to the right to peaceful enjoyment of property found in Protocol I, article 1, of the European Convention.

48/ E/CN.4/Sub.2/1992/7, paras. 89-93.

49/ European Human Rights Reports (1991), p. 319.

50/ X v. France, D 13728/88, 17 May 1990. The decision is available in French in Revue universelle des droits de l'homme, vol. 3 (1991), Part 5. See also "Human rights and the environment", an issue paper submitted to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Sierra Club Legal Defense Fund (August 1991), p. 22, (discussing the case).

51/ E/CN.4/Sub.2/1991/8, pp. 26-27 and E/CN.4/Sub.2/1992/7, pp. 23-25.

52/ European Human Rights Reports (1987), p. 433 (Application No. 9248/81).

53/ European Human Rights Reports (1989), p. 36.

54/ Petition submitted to the Inter-American Commission on Human Rights by Liliana Flores Benavides on 10 September 1992.

55/ CRC/C/3/Add.1, para. 175.

56/ CRC/C/3/Add.3, para. 115.

57/ CRC/C/3/Add.6, paras. 219-220.

58/ CRC/C/3/Add.2, para. 128.

59/ CRC/C/3/Add.2, para. 128.

60/ Communication No. 67/1980 (27 October 1982, seventeenth session) reprinted in Selected Decisions of the Human Rights Committee, vol. 2 (October 1982-April 1988), (United Nations publication, Sales No. E.89.XIV.1), p. 20.

61/ The application was declared inadmissible despite arguments by the author that domestic remedies would prove inadequate because of the difficulty of proving present injury, the possibility of protracted litigation and the inability under Canadian law to defend future generations. Ibid., pp. 20-21.

62/ Dinah Shelton, "Human rights, environmental rights and the right to environment", Stanford Journal of International Law, pp. 113-114 (1992).

63/ Decision of the Human Rights Committee of 8 April 1993 concerning Communication No. 429/1990 (CCPR/C/47/429/1990, annex).

64/ Committee on Economic, Social and Cultural Rights, Report on the fourth session (15 January-2 February 1990), Official Records of the Economic and Social Council, 1990, Supplement No. 3, paras. 108 and 110.

65/ Committee on Economic, Social and Cultural Rights, Report on the fifth session (26 November-14 December 1990), Official Records of the Economic and Social Council, 1991, Supplement No. 3, paras. 145 and 148.

66/ Committee on Economic, Social and Cultural Rights, Report on the sixth session (25 November-13 December 1991), Official Records of the Economic and Social Council, 1992, Supplement No. 3, paras. 123-125.

67/ Report of the WHO Commission on Health and the Environment, World Health Organization, Geneva, 1992.

68/ "Plaintiff Earth's future; defendant a devastator", Miami Herald, 2 December 1991, p. 13A.

69/ See Yearbook of the International Law Commission 1991, vol. II, (Part Two).

70/ Ibid., paras. 245-255.

71/ See Yearbook of the International Law Commission 1976, vol. II (Part Two), text of article 19 on State responsibility, adopted on first reading.